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Supreme Court, U.S.
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No. 98-698

In The

Supreme Court of the United States

October Term, 1998

ALLAN C. ALDRIDGE, DENNIS W. PETERSON
and HENRY A. SIERON,

Petitioners,

vs.

LILY-TULIP, INC. SALARY RETIREMENT PLAN BENEFITS
COMMITTEE and FORT HOWARD CUP CORPORATION,

Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Did the law that existed prior to October 16, 1987, require a plan sponsor to add funds to an underfunded defined benefit pension plan to pay for contingent early retirement subsidies on the plan's termination in 1986?

2. Is a pension plan participant entitled to additional "equitable relief" when the plan already provides for the full benefits due him under the law?

3. Is it appropriate for a district court to enter judgment in favor of defendants when the court of appeals has resolved all of the arguably cognizable claims in their favor?

LIST OF PARTIES

Respondents are the Lily-Tulip, Inc. Salary Retirement Plan Benefits Committee and Fort Howard Cup Corporation ("Fort Howard Cup"). Fort Howard Cup was sold to and merged into Sweetheart Cup Company Inc. ("Sweetheart"). Sweetheart's parent is Sweetheart Holdings Inc. Respondents are referred to collectively in these proceedings as "Lily."

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COUNTER-STATEMENT OF THE CASE

Respondents rely on the Statement of Facts as set forth in the decision of the Eleventh Circuit on the second of the three appeals before that court, to wit: *Aldridge v. Lily-Tulip, Inc. Salary Retirement Plan Benefits Comm.*, 40 F.3d 1202 (11th Cir. 1994) (hereinafter "*Aldridge II*") (A4-8), *cert. denied*, 516 U.S. 1009 (1995) (A169). Respondents object to petitioner's Statement of the Case since it (i) is replete with matters *de hors* the record;[1] (ii) consists of argument and rhetoric;[2] and/or (iii) contains "facts" which are flatly wrong.[3]

Procedurally, the ERISA claims in this case were first decided by the Southern District of Georgia in 1990 when it granted respondents' motion to dismiss certain of the ERISA claims. *Aldridge v. Lily-Tulip, Inc. Salary Retirement Plan Benefits Comm.*, 741 F. Supp. 906 (S.D. Ga. 1990) (A-87). Insofar as is relevant to the present petition, the district court held that petitioner's claims relating to the alleged "Social Security Offset Miscalculations" (Brief for Petitioner at 12-

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1. Petitioner's references to the purported values of certain of his claims are a prime example.

2. For example, petitioner repeatedly asserts that the Pension Benefit Guaranty Corporation ("PBGC") misrepresented facts to the Eleventh Circuit in its *amicus* filings, and, indeed, characterizes the PBGC's *amicus* filings in support of respondent as *ultra vires*.

3. The most significant error in petitioner's Statement of the Case is his repeated claim that Lily "eliminated" the contingent Subsidized Early Retirement Benefits ("SERB") (Brief for Petitioner at 16-18). It did no such thing. As the Eleventh Circuit held in 1992 (A33-38), Lily never eliminated or reduced the SERB — they are still there and would be paid if the Lily Plan's assets were sufficient to provide them. Unfortunately, "in Lily's case, they were not funded at all." (*Id.* at A37-38.)

15) and "Option [*sic*] Lump Sum Benefit Understatements" (*id.* at 15-16) had been mooted by respondents' adoption of Amendment No. 3, which amendment restored these benefit calculations to their pre-termination levels (A110-11). Petitioner's present arguments that respondents were obligated to add funds to pay for the SERB (Brief for Petitioner at 16-19) were rejected by the district court, which certified this question for interlocutory appeal. On interlocutory appeal, the Eleventh Circuit also rejected petitioner's SERB arguments based on ERISA § 204(g), 29 U.S.C. § 1054(g). *Aldridge v. Lily-Tulip, Inc. Salary Retirement Plan Benefits Comm.*, 953 F.2d 587 (11th Cir. 1992) (A26-42) (hereinafter "*Aldridge I*"). It concluded that the law in effect at the time of the Lily Plan's termination on December 31, 1986 did not require such funding upon termination and therefore affirmed the district court's dismissal of this claim (A32-38). Rehearing and Rehearing *en banc* in *Aldridge I* was denied on April 9, 1992. *Aldridge I*, 961 F.2d 224 (11th Cir. 1992)(omitted from petitioner's Opinions in the Case).

Following the decision in *Aldridge I*, the parties cross-moved for summary judgment before the district court. Respondents argued that given the district court's previous ruling that petitioner's social security offset and lump sum benefit claims had been mooted by the adoption of Amendment No. 3, coupled with the Eleventh Circuit's ruling that the SERB claim failed as a matter of law, summary judgment in favor of respondents on these claims should be entered. Petitioner argued, for the first time, that the Lily Plan had never terminated because the notices provided to participants contained errors, the Plan had inadequate termination "procedures" and because Lily did not adopt an amendment terminating the Plan. After inviting the parties to submit proposed decisions, the district court adopted petitioner's (A55, n.1). This decision was reversed *in toto* by the Eleventh Circuit in *Aldridge II* (A3-25).

In this regard, the Eleventh Circuit found that the Lily Plan had been properly terminated, effective December 31, 1986 (A24). Following the denial of rehearing (A52), petitioner sought, and was denied, a writ of *certiorari*. *Aldridge II*, *cert. denied*, 516 U.S. 1009 (1995)(A169). Remarkably, petitioner makes no mention of his earlier petition for a writ of *certiorari* in his current petition, save for its inclusion — as the last item — in his appendix (A169).

Once this Court denied the writ, respondents sought, and the district court entered, judgment dismissing this case in conformity with *Aldridge II* in March of 1996 (A43-47). Petitioner moved for reconsideration, which was denied in March of 1997 (A48-51), and then petitioner appealed, for the third time, to the Eleventh Circuit. In response to respondents' arguments that the lynchpin of the third appeal — that the Lily Plan had not been legally terminated — had already been decided against him in *Aldridge II*, petitioner argued that the court of appeals in *Aldridge II* simply had been wrong, having been presumably duped by the PBGC, whose *amicus* brief supported respondents' position. In a *per curiam* decision dated May 21, 1998, the Eleventh Circuit declined to overrule its prior decision in *Aldridge II* and affirmed the district court's entry of judgment dismissing this case. *Aldridge v. Lily-Tulip, Inc. Salary Retirement Plan Benefits Comm.*, 145 F.3d 363 (11th Cir. 1998) (hereinafter "*Aldridge III*") (A1-2). Again, petitioner sought rehearing, and, on July 29, 1998, the Eleventh Circuit denied rehearing for the third time. *Aldridge III*, *reh'g denied*, 152 F.3d 937 (11th Cir. 1998)(A122-24). This second petition for a writ of *certiorari* followed.

SUMMARY OF THE ARGUMENT

Certiorari is not warranted as to *Aldridge I* or *Aldridge II* for the reasons set forth in respondent's Brief in Opposition to

petitioner's last request for *certiorari*. *See* Brief for Respondent at 5-9, *Aldridge v. Lily-Tulip, Inc. Salary Retirement Plan Benefits Comm.*, No. 95-526. Indeed, petitioner simply advances for the second time here the same arguments he advanced in his last petition. *Compare* Brief for Petitioner at 9-19, *Aldridge v. Lily-Tulip, Inc. Salary Retirement Plan Benefits Comm.*, No. 95-526, *with* Brief for Petitioner at 12-27.

Similarly, *certiorari* is inappropriate as to *Aldridge III* because the Eleventh Circuit, in affirming the district court's entry of judgment in conformity with *Aldridge II*, appropriately rejected petitioner's efforts to relitigate the same issues that had been resolved against him in *Aldridge II*. The fact that the only proceedings in this case since this Court denied *certiorari* following *Aldridge II* consist of entry of judgment in conformity with *Aldridge II* counsels strongly against granting *certiorari* now.

In any event, even if this Court were to revisit petitioner's arguments, he has ignored the criteria set forth in Rule 10 of the Supreme Court rules. The decisions below are not in conflict with the decision of any other court of appeals nor are they in conflict with the decision of a state court of last resort or with any decisions of this Court. The court of appeals did not depart from the accepted and usual course of judicial proceedings. In sum, there is simply no reason for this Court to grant the writ.

REASONS FOR DENYING THE WRIT

After the Eleventh Circuit decided *Aldridge II* against petitioner, he sought a writ of *certiorari*, which this Court denied. *Aldridge II*, 516 U.S. 1009 (1995). Since that time, there have been no new proceedings or developments. The district court simply entered judgment in conformity with *Aldridge II*, and the Eleventh Circuit, in *Aldridge III*, affirmed that

judgment. As the district court noted when entering judgment in conformity with *Aldridge II*: "The Eleventh Circuit's decision [in *Aldridge II*] requires this Court and the parties to accord it finality, dignity and respect." (A50). Because there have been no new proceedings since *certiorari* was last denied, it would be improvident to grant *certiorari* now. Although the prior denial of the writ does "not establish the law of the case or amount to *res judicata* on the points raised," *Hughes Tool Co. v. TWA*, 409 U.S. 363, 365 n.1 (1973), the fact remains that petitioner has not, and cannot, offer any new facts or legal authority suggesting that this petition should fare any better than the last. *See, e.g., Washington v. Washington State Comm'l Passenger Fishing Vessel Ass'n*, 443 U.S. 658, 671-72 & n.19 (1979) (earlier denial of petition at interlocutory stage in proceedings); *Mercer v. Theriot*, 377 U.S. 152, 153-54 (1964) (first petition denied before additional evidence adduced at district court level). In short, since there is nothing new for this Court to consider on this second petition, it should be denied.

Furthermore, the potential impact of a decision from this Court on other plans or other plan terminations is exceptionally limited. Petitioner's legal argument concerning Lily's obligation to fund the SERB turns on the construction of the law in effect on December 31, 1986, *i.e.*, the law governing terminations that occurred during the "window" in time in the evolution of ERISA between 1984, when the Retirement Equity Act of 1984, Pub. L. No. 98-397, 98 Stat. 1426 (1984), was enacted, and October of 1987, when the Omnibus Budget Reconciliation Act of 1987, Pub. L. No. 100-203, 101 Stat. 1330 (1987) (the "1987 Act") became effective. Petitioner, respondents, the Eleventh Circuit (A36-37) and every other court that has addressed the issue agree that had the Lily Plan terminated after the effective date of the 1987 Act, Lily would have been obligated to add funds to the Lily Plan to pay the

SERB. As a result, any further analysis of the Eleventh Circuit's decision in *Aldridge I* regarding ERISA's funding requirements upon the termination of a plan prior to the effective date of the 1987 Act *ipso facto* would be limited to plans that terminated more than eleven years ago. In other words, additional analysis of the SERB issue would have virtually no significance for other cases. This factor alone counsels against granting *certiorari*.

In addition, there is no conflict between *Aldridge I*'s analysis of the SERB issue — including its analysis of ERISA § 204(g), 29 U.S.C. § 1054(g), and the virtually identical provisions of IRC § 411(d)(6) and Lily Plan § 8.1 — and that of any other circuit court or of this Court. *Aldridge I* is in complete harmony with *Mead Corp. v. Tilley*, 490 U.S. 714 (1989). In *Mead*, this Court addressed the question whether certain plan assets of an *overfunded* plan may revert to a plan sponsor before unreduced early retirement benefits are paid to participants. *Aldridge I*, which considered *Mead* at length, was decided in accordance with *Mead* in the context of an *underfunded* plan (A35-36). As the lower court explained:

> In the instant case, the question is not whether and when plan funds may revert to the sponsor, but rather whether ERISA requires the sponsor to *add* funds to the plan upon termination.

(A35 (emphasis in original)).

Similarly, no circuit court has come to a contrary conclusion with respect to 1986 law. The cases upon which petitioner relies merely note that certain plan terms or collective bargaining agreements may give rise to claims against the employer beyond those available against the plan's assets. *See, e.g., Johnson v. Georgia-Pacific Corp.*, 19 F.3d 1184 (7th Cir. 1994); *United Steel Workers v. North Bend Terminal*, 752 F.2d

256, 259 (6th Cir. 1985). *Aldridge I*, however, specifically considered the application of this undisputed principle to the facts at bar and concluded that since the Lily Plan's terms were identical to ERISA's requirements, the Lily Plan afforded petitioner no benefits beyond those required to be paid under ERISA (A33-34).

Petitioner also claims that *certiorari* should be granted because the Court allegedly engaged in a statutory analysis of ERISA in conflict with Supreme Court precedent when it mentioned that the 1987 Act changed the law to require thereafter that plan sponsors add funds to underfunded plans to pay for all accrued benefits, including the SERB. In support of this supposed conflict, petitioner relies on *Mackey v. Lanier Collection Agency*, 486 U.S. 825, 840 (1988), which mentions that subsequent congressional enactments "do[ ] not control the issue" of statutory construction of earlier statutes. *Id.* Since *Mackey* does not preclude such an analysis and since reliance on the 1987 Act was only one of several bases for reaching the conclusions set forth in *Aldridge I*,[4] there is no "conflict," and *certiorari* should be denied.

As for *Aldridge II*, petitioner again claims that *certiorari* should be granted on the ground that *Aldridge II* rejected his assertion that the Plan never terminated because portions of Amendment No. 2 violated ERISA § 204(g), 29 U.S.C. § 1054(g) (Brief for Petitioner at 5, 16-18). *Aldridge II* held that it was not necessary to amend the Plan in order to terminate it, and therefore the remedy for the violative portions of Amendment No. 2 was the adoption of Amendment No. 3, not a nullification of the termination. Since no court has held that a participant is entitled to undo a termination under

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4. *Aldridge I* also examined the plain language of the controlling law, the decisions of this Court, the decisions of other circuit courts and the views of the PBGC (*see* A36-38).

circumstances even remotely akin to those in this case, there is no conflict and, thus, no reason to grant *certiorari*.

Petitioner claims that *Varity v. Howe*, 516 U.S. 489 (1996), represents a change in law that "mandates" that this Court hold that the plan never terminated (Brief for Petitioner at 20). As a preliminary matter, *Varity* was decided before petitioner moved for reconsideration of the district court's 1996 decision, and the district court expressly, and correctly, concluded that *Varity* is inapposite (A50). In addition, *Varity* was the focus of both petitioner's failed third appeal and his failed petition for reargument. The Eleventh Circuit properly rejected petitioner's argument because *Varity* has no bearing on this case whatsoever.

In *Varity*, the employer-sponsor of a welfare benefit plan held a meeting to persuade employees to change employers and benefits plans from Varity's solvent subsidiary, Massey-Ferguson, to an insolvent and separately incorporated subsidiary, Massey Combines. During the meeting, Varity tricked its employees into believing that Massey Combines and its benefit plan would continue to provide the same benefits as those provided by Massey-Ferguson. Once Massey Combines and its benefit plan collapsed, plaintiffs were left with no remedy for benefits due them under that plan (since neither their employer nor the plan had any available assets). In addition, since they had been tricked into withdrawing from the Massey-Ferguson plan, they had no benefits due them under that plan. Under those circumstances, the Court held that the plaintiffs were entitled to pursue their claims for equitable relief against the Massey-Ferguson benefit plan under ERISA § 502(a)(3). *Id.* at 513-15.

In this case, and as the lower courts correctly held, respondents' adoption of Amendment No. 3 in 1989 restored

the plan to its full pre-Amendment No. 2 benefits, thereby providing petitioner with all of his accrued benefits, and mooting his claims (A110-111; A8-9 (*Aldridge II*)). In other words, and in sharp contrast to the situation in *Varity*, the participants here are receiving all benefits due them under the terms of the plan as it existed prior to the adoption of Amendment No. 2 (which is precisely the relief requested in the complaint).[5] Thus, there is no "other appropriate equitable relief" to award. *See* ERISA § 502(a)(3)(B), 29 U.S.C. § 1132(a)(3)(B). Therefore, *Varity* has no import here,[6] and there is no reason to grant the writ.

Finally, Petitioner claims that *certiorari* should be granted because the Eleventh Circuit accorded the PBGC too much deference. As a preliminary matter, neither *Aldridge II* nor *Aldridge III* even makes reference to the PBGC's *amicus* submissions. As for *Aldridge I*, the Circuit Court accorded the PBGC the deference this Court has indicated is appropriate, *see Mead Corp. v. Tilley*, 490 U.S. 714 (1989), and no more. According appropriate deference to administrative agencies simply does not warrant this Court's review.

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5. Petitioner's prayer for relief as to his social security offset and lump sum benefit claims was to have these benefits calculated in accordance with the plan as it existed just prior to the adoption of Amendment No. 2.

6. If, in fact, *Varity* had any bearing on this case, one would have expected that the Court, which granted *certiorari* in *Varity* on April 24, 1995, *see* 115 S. Ct. 1792, would have deferred consideration of the *certiorari* petition in *Aldridge II* until it decided the *Varity* case. *See, e.g., McLeod v. Oregon Lithoprint*, 517 U.S. 1116 (1996) (granting *certiorari* and vacating and remanding case to the Ninth Circuit for "further proceedings in light of *Varity*"); *see also Keney v. New York*, 388 U.S. 440 (1967) (petition held for more than two years until cases involving similar issues decided). This Court did not follow such an approach, and first denied *certiorari* on December 4, 1995, while *Varity* was still pending.

In sum, none of the reasons articulated in Rule 10 of the Supreme Court Rules is implicated in any of *Aldridge I*, *Aldridge II* or *Aldridge III*, and *certiorari* should be denied.

CONCLUSION

The decisions below involve well-settled principles of law that are not in conflict with, nor do they represent departures from, the usual course of judicial proceedings. Accordingly, respondents request that the petition be denied.

Respectfully submitted,

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